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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,417	10/02/2003	Wei Zhao	9400-43	8458
39072	7590	02/08/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC, P.A. P.O. BOX 37428 RALEIGH, NC 27627				ZANELLI, MICHAEL J
ART UNIT		PAPER NUMBER		
3661				

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/677,417

**Applicant(s)**

ZHAO ET AL.

**Examiner**

Michael J. Zanelli

**Art Unit**

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 02 October 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/27/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The application filed 10/2/03 has been examined. Claims 1-32 are pending.
2. The IDS filed 10/27/03 has been considered.
3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
4. The disclosure is objected to because of the following informalities: On page 7, "Figure .B" should be --Figure 12B--.
5. Claims 4-19, 22 and 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - A. As per claims 4, 5, 8, 9, 12-15, 19, 22, 28, 30 and 32, the scope of the claims are indefinite because of the alternative "and/or". The examiner suggests using the phrase --at least one of ... and ...-- as appropriate for each occurrence.
  - B. As per claims 4 and 8, "the dynamically determined geographic location and direction of travel" and "identified destination of the subscribers" lack antecedence.
  - C. As per claim 12, "the subscriber's vehicle" lacks antecedence.
  - D. As per claim 17, "the dynamically determined geographic location of each subscriber" lacks antecedence.
  - E. As per claim 18, at line 3 "or" should be --and-- since at least one of a group is selected.
  - F. As per claim 29, "the system" lacks antecedence.

G. As per claim 32, at line 12 insert --of-- after "condition".

H. All claims depending from a rejected base claim are rejected as incorporating the same deficiencies.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,741,926 in view of Smith, Jr. et al. (5,774,827). The difference between application claims 1-32 and patent claims 1-32 is the manner in which traffic notification is initiated whereby the application claims provide automatic notification and the patent claims provide notification in response to a subscriber request. However, at the time of applicant's invention it was known to alternatively provide automatic traffic notification to a subscriber based on predefined subscriber criteria (see Smith, col. 3, lines 61-63). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the traffic notification system of Patent No. 6,741,926 to alternatively provide automatic notification as was well-known in the art as exemplified by Smith.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-8, 10, 11, 15-22, 27-30 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, Jr. et al. (5,774,827).

A. As per claims 1, 5, 19-21, 28 and 32, Smith discloses a traffic notification system (Fig. 1) and method comprising at least one subscriber device (12) with a location determining means (58) which provides dynamically determined location and direction of travel, a traffic notification server (14) in communication with the subscriber device(s), subscriber database (22) for storing subscriber information and a traffic monitoring system (24) for providing traffic information for a road network. The system utilizes the stored subscriber information to automatically notify the subscriber of traffic conditions relative to prestored travel routes or destinations (col. 1, line 61 to col. 2, line 27; col. 3, lines 61-63). The system monitors the location(s) of the subscriber device(s) using the location determining means (58) such that the traffic information can be dynamically updated as the subscriber travels along a route (col. 3, lines 49-54).

B. As per claims 2-4, 6-8, 10, 11, 15-17, 22, 29 and 30, as noted above wherein Smith monitors the movements of one or more subscriber devices using location information and provides each subscriber with traffic information customized based on the prestored subscriber information. Each subscriber device includes a GPS receiver for providing the location information which allows for "up-to-the-minute" traffic information for a given route (see cols. 1-3).

C. As per claim 18, as above wherein the traffic information is provided by at least road sensors (col. 2, lines 5-8).

D. As per claim 27, as above wherein each subscriber preregisters information regarding preferred travel routes, information to enable notification (i.e., wireless telephone number) and a coding scheme for identifying the travel routes (col. 1, line 61 to col. 3, line 35).

10. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Trayford et al. (WO 02/01532).

A. As per claims 1, 5, 19-21, 28 and 32, Trayford discloses a traffic notification system (Abs; Fig. 1) and method which includes at least one subscriber device (7) (page 10, lines 1-2) with a location determining means (page 22, lines 18-21) which provides dynamically determined location and direction of travel, a traffic notification server (5,6) in communication with the subscriber device(s), subscriber database (4) for storing subscriber information and a traffic monitoring system (2) for providing traffic information for a road network. The system utilizes the stored subscriber information to automatically notify the subscriber of traffic conditions relative to prestored travel

routes or destinations (page 2, lines 30-34; page 3, lines 26-28; page 4, lines 24-30; page 11, lines 16-23). The system monitors the location(s) of the subscriber device(s) using the location determining means such that the traffic information can be dynamically updated as the subscriber travels along a route (page 6, lines 31-34).

B. As per claims 2-4, 6-8, 10, 11, 15-17, 22, 29 and 30, as noted above wherein Trayford monitors the movements of one or more subscriber devices using location information and provides each subscriber with traffic information customized based on the prestored subscriber information. Each subscriber device includes a GPS receiver for providing the location information which allows for dynamic updating of the traffic information (page 2, lines 30-34; page 3, lines 26-28; page 4, lines 24-30; page 6, lines 31-34; page 11, lines 16-23; page 22, lines 18-24).

C. As per claim 18, as above wherein the traffic information is provided by at least road sensors (page 3, lines 3-5).

D. As per claim 27, as above wherein each subscriber preregisters information regarding preferred primary/alternate travel routes, information to enable notification (i.e., wireless telephone number) and means for identifying the travel routes (page 4, lines 24-29; page 9, lines 31-33; page 10, lines 1-5; page 22, lines 12-13, 31-34).

E. As per claims 9, 12-14, 23-26 and 31, as above wherein the system may utilize the Internet (web) to allow a subscriber to create/edit subscriber information as well as determine optimal routes to a given destination whereby travel times may be taken into account (page 4, lines 24-32; page 10, lines 3-8; page 16, lines 8-14). The system may also receive traffic and other information from various websites and incorporate the

information in the traffic notifications (page 10, lines 15-18). With regards to claims 13-14, the system of Trayford is computer-based and therefore would inherently operate according to software (program) code.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 9, 12-14, 23-26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Hanson et al. (6,253,146) and Fan et al. (5,959,577).

A. Smith is applied as above. Smith discloses creating user registration information which provides commuter route information and various criteria under which the notification system is to inform the user (Fig. 1:22; col. 1, line 67 to col. 2, line 3), but does not provide any detail as to the structures/processes for creating the information.

One of ordinary skill in the art would have looked to known systems for enabling one to create the user registration information.

B. Hanson discloses a traffic notification system which automatically notifies a subscriber of traffic conditions and suggests alternative routes (Abs). As noted in col. 6, line 66 to col. 7, line 23, a subscriber can provide personal and travel-related information to the notification system via the Internet (see also col. 8, lines 30—32, 49). The system continuously receives traffic information from various sources and correlates that information with subscriber information to determine whether to automatically alert a specific subscriber as to the traffic condition (col. 2, line 27 to col. 3, line 6). The system may also use subscriber location information to provide dynamic traffic updates as the subscriber travels along a route (col. 6, lines 54-64). Hanson teaches that one can use the Internet (web) to register subscriber information as well as provide additional means of obtaining traffic information. One of ordinary skill in the art would have found it obvious to utilize this known technology in the system of Smith to enable the subscriber to create/edit their subscriber information. One of ordinary skill in the art would have been motivated to utilize the Internet in this manner because it was recognized in the art that the Internet provided a readily available and cost effective means of communication (see as exemplary Fan at col. 11, lines 13-27).

C. Hanson further teaches determining alternative travel routes based on travel times such that if a subscriber's preferred route is congested, alternative route(s) are determined based on travel times (col. 7, lines 7-23; col. 8, lines 51-64). One of ordinary skill in the art would have found it advantageous to provide such alternative

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route determining means in the system of Smith because it would have provided additional routes if the subscriber preferred routes were all congested. Smith suggests providing such a capability at col. 3, lines 49-60.

D. With regards to claims 13-14, Smith, Hanson and Fan are each computer-based and therefore would inherently operate according to software (program) code.

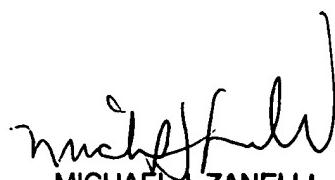
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents are of general interest.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (703) 305-9756. The examiner can normally be reached on Monday-Thursday 5:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/mjz



MICHAEL J. ZANELLI  
PRIMARY EXAMINER